

REMARKS

This Amendment and Request for Reconsideration is filed in response to the final action of March 12, 2007 in an RCE.

The Declaration filed on December 26, 2006 under 37 CFR 1.131 was considered by the Examiner but was considered to be ineffective to overcome the *Hall* (U.S. 2004/0203352) reference.

The Examiner stated that the evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the *Hall* reference.

First, applicant did not seek to establish an *actual* reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the *Hall* reference. Rather, applicant seeks to establish a *constructive* reduction to practice of the invention based on earlier conception coupled with diligence up to the U.S. filing date, i.e., the date of the constructive reduction to practice.

The Examiner states that the applicant has not submitted any document which prove that the applicant's claimed invention was reduced to practice before the filing date of the *Hall* reference, referring to MPEP § 715.07. It is noted that in the cited section of the MPEP in the third sentence of the first paragraph thereof under the heading General Requirements, it is stated that evidence in the form of exhibits may accompany the affidavit or declaration. It does not say that evidence in the form of exhibits must accompany the affidavit or declaration. The Declaration of Tommy Ginman did recite testimonial factual evidence, not conclusions and was sufficient to establish by evidence an earlier conception coupled with diligence up to the date of constructive reduction to practice. However, it is true that applicant did not specifically mention that the events took place in this country or a NAFTA or WTO member country since at least one of the events, i.e., the actual constructive reduction to practice occurred in this country.

However, the enclosed additional Declaration of Timo Sallinen and the additional Declaration of inventor Pauli Seppinen do recite that the events

connected with the conception and the diligence took place in Finland which is a WTO country and was a WTO country at the time of the factual events recited in the declaration.

Contrary to the Examiner's conclusion about documentary evidence, the declaration submitted by Tommy Ginman does meet the criteria for testimonial fact (not conclusions) and has not been rebutted by the Examiner. Therefore, the record reflects that the invention was conceived before the effective date of the *Hall* reference and was coupled with diligence beginning at least the day before the effective date of the Hall reference up until the constructive reduction to practice date.

Nevertheless, the applicant has now submitted a Declaration by Pauli Seppinen, one of the named inventors, who has submitted testimony in the form of factual statements supported by documentary evidence in the form of exhibits attached to his declaration. In particular, he recites the fact that he is a first named inventor on the subject patent application and that the application is based on an invention report that was created before June 18, 2002. Exhibit A attached to his declaration shows an email and one of the pages from the invention report showing a figure similar to that which is claimed in the present application and shown in Fig. 1 thereof. This establishes conception prior to June 18, 2002 because the inventor Pauli Seppinen made a factual statement to that effect in numbered paragraph 2 of this declaration and the documentary evidence submitted in Exhibit A shows an email to his co-inventor on a date which predates June 18, 2002.

On two separate dates before June 18, 2002 the inventor Pauli Seppinen then sent a modified version of the invention report to the assignee's Intellectual Property Rights Department (see Exhibit B and Exhibit C of the Declaration of Pauli Seppinen) along with Exhibit D which shows the first page of the invention report having a date prior to June 18, 2002 as established by the factual statement by Pauli Seppinen (see numbered paragraph 5 of the Declaration of Pauli Seppinen).

Referring now to the Declaration of Timo Sallinen, he has made in paragraph 2 of his declaration testimonial statement of fact that he received an email before June 17, 2002 (see Exhibit A of his declaration) from Pauli Seppinen

and showing the figure taken from the appendix of the invention report. This documentary evidence and testimonial evidence also confirms the conception occurring before June 17, 2002.

Mr. Sallinen also makes testimonial statement of fact that the invention report was processed before the assignee's Patent Board and a decision for patenting the case was made on June 17, 2002 by the assignee's Patent Board, i.e. before June 18, 2002. Mr. Sallinen also states that an email was sent to a U.S. law firm for drafting on June 20, 2002 and that a draft patent application from the U.S. firm was received back on June 24, 2002. See statements 1 through 5 of the Declaration of Timo Sallinen.

Mr. Sallinen goes on to make further testimonial statements of fact that the draft was checked and comments sent back on June 26, 2002 with some changes made by the inventors and instructions to file the application with the changes. See paragraph numbered 7 in the Declaration of Timo Sallinen.

Mr. Sallinen goes on to make a further testimonial statement of fact that a report was received from the U.S. attorneys on June 27, 2002 with a copy of a provisional application Serial No. 60/392,732 filed June 26, 2002.

Inasmuch as the various declarations submitted under 37 CFR 1.131 have now established a conception beginning at least as early as June 17, 2002 when the Patent Board made a decision for patenting and that a patent application was drafted, reviewed, modified, and filed within nine days thereafter, it is submitted that the applicant has established a date of conception at the latest on June 17, 2002 coupled with diligence up to the date of the constructive reduction to practice on June 26, 2002, a period of only nine days.

The Examiner refers to June 18, 2001 as the effective date of the *Hall* reference based on a provisional filed on that date. However, the Examiner has not actually cited the provisional application of June 18, 2001 nor has the Examiner pointed to the portions of the provisional application of *Hall* which might be applicable to this rejection under 35 U.S.C. § 103(a). Therefore, the Examiner's reference to the provisional application is incorrect and not in accordance with correct procedure.

Moreover, although it is not applicant's obligation to do so, a quick review of the *Hall et al* provisional (as can be viewed on the PAIR system) reveals that the provisional does not appear to say anything about an RFID module. Therefore, the provisional application of *Hall et al* filed on June 18, 2001 is ineffective as a reference.

Moreover, it must be mentioned that by presenting this evidence of prior invention, the applicant does not wish to convey the impression that the 35 U.S.C. § 103(a) rejection is correct on the merits. It is simply unnecessary to address the merits since applicant has established a date of prior invention to make the foundation of the 103 rejection inapplicable.

Withdrawal of the 35 U.S.C. § 103 rejection is requested based at least on the reasons given above.

The objections and rejections of the Office Action of March 12, 2007, having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of claims 1-16 to issue is solicited.

Respectfully submitted,



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